

## **THE MALACCA CODE AS THE BASIS OF THE FEDERAL CONSTITUTION**

The Malacca Code or 'Kanun Melaka', is a set of written laws, promulgated in the year 1424 CE, by Sultan Muhammad Shah, as stated in the Malay Annals or 'Sejarah Melayu'. It fulfilled the characteristics of a modern constitution as defined by many modern scholars of law including Hood Philip and Jackson. It existed and was in used earlier than the 'British Bill of Rights' promulgated in 1689. This is an important fact, that the Malay Laws are in force earlier than the said British Law!! The Malays understood the status of their monarchs vis-a-vis to their subjects in a binding compact, much earlier than the British or any other colonial powers. This becomes the 'Law of the Land' of Malacca and its succeeding kingdoms as well, and it forms the basis of the Malaysian Federal Constitution today.

This is important to the understanding of the current Federal Constitution according to Datuk Dr Wan Ahmad Fauzi Wan Husain@ [Ibn Wan Husain Wan](#), who elucidate this in his seminal work, "Kedaulatan Raja-Raja Melayu", published in 2018.

This Code was codification of the earlier Oath, between Demang Lebar Daun and Sang Sapurba. (Refer my earlier article: The Embryonic Malay Constitution)

The Oath was originally done in Palembang, Sumatera and was carried forward to the Malay Peninsular state of Malacca as the Rulers are descended from Palembang. When Islam becomes the faith of the Malay Rulers, the Sharia becomes the main arbiter to both the written and unwritten Laws of the Malay Kingdoms. The Sultan become the Vice Regent of the Almighty Allah, the Lord of all lords, in ruling his kingdom according to the precepts of Islam. He is made aware by this sacred trust, when in the modern Yang di Pertuan Agong, he utters the oath, "Wallahi, Wabillahi, Watallahi...", the Oath of the Sovereign between His Majesty and Almighty Allah, the Lord of all lord, Sovereign of the universe.

The rule of the Sultan or 'Kerajaan' is only binding when upon the proclamation of the Sultan, the phrase "Daulat Tuanku" is uttered by the other office bearers and all those present in the ceremony.

The most important item of the Code, is the framework of sovereignty, as per Wan Ahmad Fauzi, consists of two pertinent , namely;

λSource of sovereignty

λCharacteristics of sovereignty

The source of the power to the Malay Rulers is Allah, the Almighty. Because of this, His Majesty utters The Oath, and assumes the title Custodian of Islam in all his kingdom. His Majesty virtually ties all his subjects to this Oath. All His subjects, upon hearing this Oath, swears loyalty and fealty to His Majesty. That is the reason why His Majesty's sovereignty shall not be tied to any laws or conventions which limits His powers to perform His duties as the Custodian of Islam.

The characteristics of sovereignty, shall be divided into 'Absolute' and 'Sovereign trust'. For the former it refers to immovable sovereignty, that is, Allah the Almighty and the religion Islam (as practised locally), in which the Sultan is the Custodian of this Trust. For the latter, it is the delegation of power from the Sultan. This is influenced by natural laws, as well as religious, ideological or on the general will of the subjects. The institutions built from this delegated laws, are subject to revisions as the conditions of the state changes.

If the characteristics of the sovereignty is tied to religious views, it is not absolute, in that respect, as only Allah the Almighty is free from such restraints.

However, when the laws are not tied to anything other than sophistry of the people, it becomes a secular constitution. For the average Muslims, nothing good can come out of this, as protections granted by Islam no longer applies to them.

The role of Islam, cannot be underestimated in the Sultanate of Malacca. Islam was 'Law of the Land' for Malacca, without which it is impossible to perform its role as "unified central core element" to the basic Malay identity. Through Malacca, the Malay identity is exported along with Islam to the whole Malay Peninsula and to the island of Sumatra, which is the old Seriwijaya territory.

The Portuguese were amazed to see this phenomena on the coasts of the Straits of Malacca. The copy of the Malacca Code presently in Biblioteca Apostolica Vaticana, the Vatican library, states that the Code has various clauses covering among others, civil and personal laws, criminal laws, maritime laws, general Islamic laws as well as sanctions and punishments on offenses.

So good is this Code, that it became the Codes of many other Malay Sultanates and elements of it is still there in the Federal Constitution.

The widespread use of the Malacca Codes in its various iterations, as used by the various Malay Sultanates, has cemented its position as a working constitutional document.

The Malacca Code was not written in a vacuum. It was written by scholars and scribes who were very conversant with the Islamic laws as well as the local prevailing customs or 'adat'. It was based on great works from the Shafi'i school of Islamic law like, 'Fath al-Qarib', 'Talkhis al-Minhaj' and 'Minhaj al-Talibin' by Imam Mahyuddin Abu Zakariyyah bin Syaraf al-Nawawi and many others.

In addition to that, Islam as the 'Law of the Land' and the Malacca Code, as basis of the Federal Constitution tells us, that the real source of sovereignty of the Malay Rulers comes from Almighty Allah (and Islam) as stated in original Malacca Code.

The Jawi script, the modified Arabic script used in Malay, becomes the official script of Malay Sultanates. It is the official script for use in international diplomacy, as well as domestically and is the script used in drafting the State Laws of Johore, Pahang, Trengganu and others including the handover documents of sovereignty of Malaysia.

In the Johor Constitution (1895), it was drafted in three languages; Malay (in the official Jawi script), Malay (in the Romanised alphabets) and in English. It is also interesting to note that until today, the Yang Di Pertuan Agong's official Oath of Office is still in Jawi.

Use of this script is important, as it emphasize the status of Islam in the 'Kerajaan'. The script becomes the gateway of Islamic knowledge and in the past also as a medium used in culture as well as debates and discussion by the intelligentsia.

As to emphasize the importance of the Malacca Code which has become the basis of State Constitution of the Malay States, in the agreement that led to the formation of the Federation of Malaya, it is stated that, the sovereignty of the Malay Rulers shall be defined as sovereignty enjoyed by the Malay Rulers in 1st December, 1941. This becomes the legitimate legal framework as a basis to interpret the Clause 181(1), the sovereignty of Malay Rulers. The statement, " ... sebagaimana yang telah ada..." in the Clause, reaffirms that.

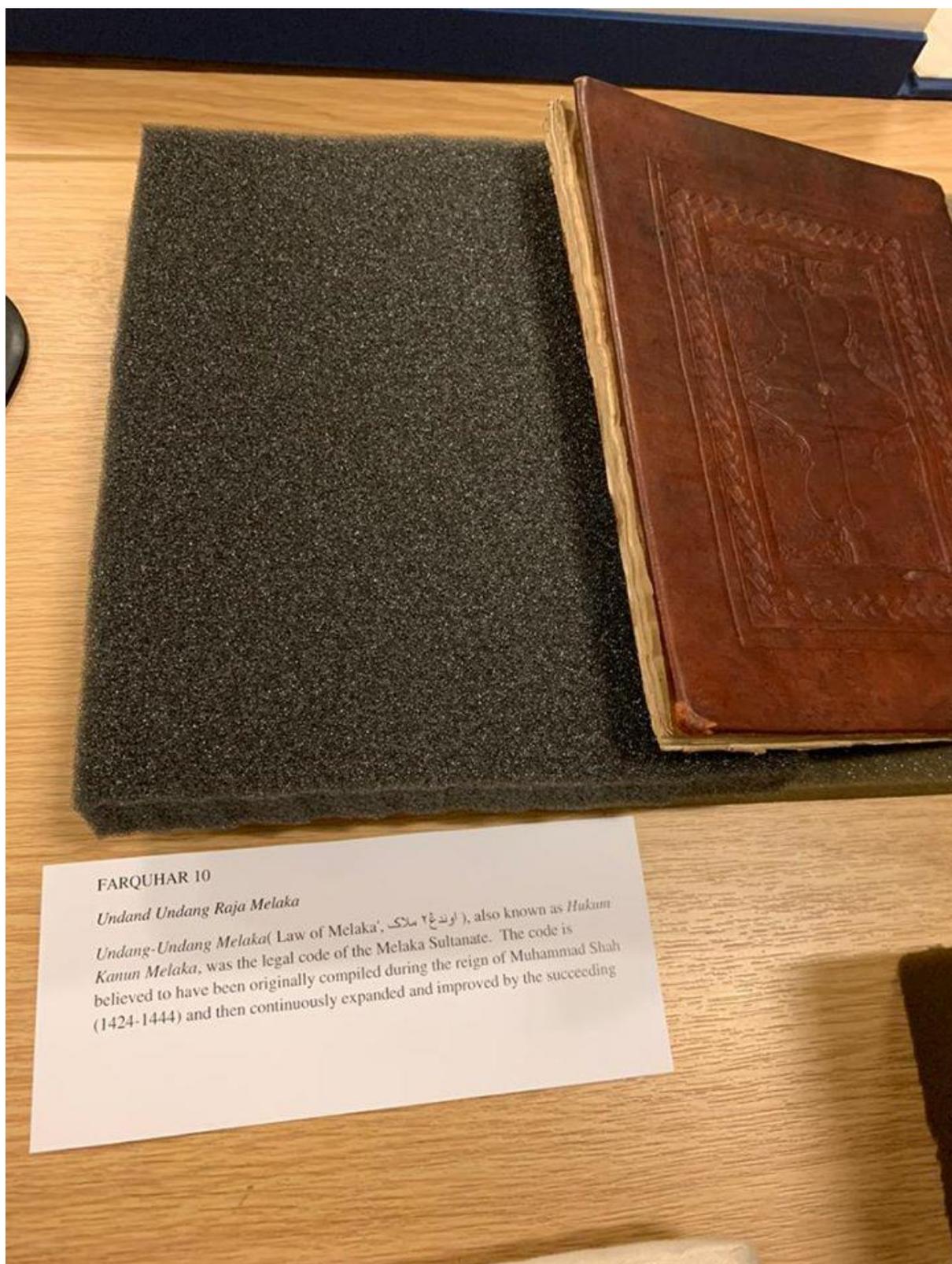
In concluding this article, it is worth quoting the former Federal Judge, Tun Salleh Abbas in one of his judgement, has stated thus:

"Before the British came to Malaya, which was then known as Tanah Melayu, the sultans in each state of their respectives states were the heads not only of

the religion of Islam but also as the political leaders in their states, which were Islamic in the true sense of the word, because, not only were they themselves muslim, their subjects were also muslims and the law applicable in the states was Muslim law. Under such law, the sultan was regarded as God's vicegerent (representative) on earth. He was entrusted with the power to run the country in accordance with the law ordained by Islam, ie Islamic law and to see that the law was enforced. "

By  
Datuk Rumbowe

## The Malacca Code



FARQUHAR 10

*Undand Undang Raja Melaka*

*Undang-Undang Melaka* (Law of Melaka', *اوندغ ملاك*), also known as *Hukum Kanun Melaka*, was the legal code of the Melaka Sultanate. The code is believed to have been originally compiled during the reign of Muhammad Shah (1424-1444) and then continuously expanded and improved by the succeeding



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- 25 فصل قدیمتانی با ملاوند دوس
- 26 فصل قدیمتانی که مردم دان معادوم
- 27 فصل قدیمتانی که اوردن بخور به بواه بدره ان فیغ
- 28 فصل قدیمتانی که اوردن بخور به کاغذ واد جا کوف
- 29 فصل قدیمتانی که اوردن بخور به کات اوردن بخور به
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